



NASAA

NORTH AMERICAN SECURITIES ADMINISTRATORS ASSOCIATION, INC.

750 First Street N.E., Suite 1140
Washington, D.C. 20002
202/737-0900
Fax: 202/783-3571
www.nasaa.org

November 2, 2009

The Honorable Barney Frank
Chairman
Financial Services Committee

The Honorable Spencer Bachus
Ranking Member
Financial Services Committee

The Honorable Paul E. Kanjorski
Chairman
Capital Markets, Insurance and
Government Sponsored Enterprises
Subcommittee

The Honorable Scott Garrett
Ranking Member
Capital Markets, Insurance and
Government Sponsored Enterprises
Subcommittee

U.S. House of Representatives
Washington, D.C. 20515

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Washington, D.C. 20515

Re: Amendments to the October 1, 2009 Discussion Draft of the Investor Protection Act (to be reported as H.R. 3817)

Dear Chairmen Frank and Kanjorski, Ranking Members Bachus and Garrett, and Members of the Committee:

The members of the North American Securities Administrators Association (NASAA)¹ appreciate your continued efforts to strengthen protections for your investor constituents. In that regard, I write to express the general support of NASAA for the Investor Protection Act of 2009 ("IPA") and for various amendments to the IPA that were adopted by the Committee during the mark-up on October 27, 2009. Unfortunately, our support of the IPA is tempered by our serious concern over the Committee's adoption and consideration of amendments that will not serve investors.

Threshold for State Registration and Examination of Investment Advisers

NASAA appreciates the passage of Chairman Frank's amendment to increase the threshold that separates the registration of advisers between state securities regulators and the Securities and Exchange Commission ("SEC"). Currently that threshold stands at \$25 million in assets under management and has remained unchanged for over a decade. As stated in my testimony before

¹ The oldest international organization devoted to investor protection, the North American Securities Administrators Association, Inc., was organized in 1919. Its membership consists of the securities administrators in the 50 states, the District of Columbia, the U.S. Virgin Islands, Canada, Mexico and Puerto Rico. NASAA is the voice of securities agencies responsible for grass-roots investor protection and efficient capital formation.

the Committee on October 6, 2009, NASAA members are fully prepared and equipped to accept the responsibility for the oversight of investment advisers with up to \$100 million in assets under management. An increase in the threshold would allow the SEC to focus on larger investment advisers while the smaller advisers would continue to be subject to state regulation.

The Committee adopted an amendment that appears to accomplish this important objective. The amendment, offered by Chairman Frank and designated as "Frank 003" reflects an intent to raise the threshold to \$100 million in assets under management. However, the amendment as written contains technical errors that can be easily resolved. We would be happy to work with the Committee and its staff in addressing the technical issues in the amendment.

Senior Investor Protection

NASAA was also very pleased with the Committee's decision to adopt the amendment from Rep. Paul Hodes addressing senior investor protection. NASAA has long been concerned with the use of misleading professional designations that convey an expertise in advising seniors on financial matters. Many of these designations in reality reflect no such expertise but rather are conveyed to individuals who pay to attend weekend seminars and take open book, multiple choice tests. Our concern led us to promulgate a model rule designed to curb abuses in this area. Nineteen NASAA members have adopted a rule governing the use of these designations.

The Hodes amendment recognizes the harm to seniors posed by the use of such misleading activity and establishes a mechanism for providing grants to states as an incentive to adopting the NASAA model rule. The grants are designed to give states the flexibility to use funds for a wide variety of senior investor protection efforts, such as hiring additional staff to investigate and prosecute cases; funding new technology, equipment and training for regulators, prosecutors, and law enforcement; and providing educational materials to increase awareness and understanding of designations.

Fiduciary Duty

NASAA has long advocated that broker-dealers providing investment advice should be subject to a fiduciary standard and more specifically it should be the same standard applicable to investment advisers. The Committee adopted a number of amendments that will narrow the application of the standard and may very well erode this critical element of investor protection. We share the concerns raised by the Consumer Federation of America, Investment Adviser Association, and other organizations as referenced in their letter of November 2, 2009, and look forward to also working with the Committee and its staff in addressing these issues.

Broad Delegation of Authority to Broker-Dealer Self-Regulatory Organization

We are very concerned with the far-reaching implications of an amendment offered by Ranking Member Spencer Bachus that would permit the SEC to delegate responsibility to the broker-dealer SRO, FINRA, to enforce compliance by its members and associated persons with the provisions of the IPA. In other words, the amendment would provide the SEC with the authority

to empower FINRA to enforce the fiduciary duty provisions in the Investment Advisers Act against not only broker-dealer members but also any affiliated investment advisory firm or any associated person. Additionally, the amendment would give FINRA sweeping rule-making authority.

During the discussion of this amendment, Chairman Frank remarked that regulation should be a government function and NASAA wholeheartedly agrees. NASAA is opposed to any effort to expand the jurisdiction and authority of private, membership organizations into an area that is more appropriately the province of government. The regulation of investment advisers is the responsibility of state and federal governments accountable to the investing public. Extending this responsibility to a private, membership organization amounts to an “outsourcing” of a government regulatory obligation.²

Recognizing the need for careful analysis of the risks and benefits of delegating additional authority to an SRO, the Committee approved a study proposed by Rep. Carolyn McCarthy to determine whether the very action provided in the amendment was even necessary. The Bachus amendment directly contravenes the spirit and intent of the McCarthy amendment. Until such time as this and other studies called for in the IPA are complete, the Committee should refrain from taking such a dramatic step. The Committee’s desire to improve the regulation and examination of investment advisers is understandable. The SEC’s examination of advisers is woefully inadequate and that is why, as noted above, NASAA supports raising the dividing line for registration of advisers with state securities regulators. The IPA also contains other appropriate provisions designed to address this issue: increased funding for the SEC and providing the SEC with the authority to collect fees from investment advisers covering all costs relating to the agency’s adviser examination activities.

Conclusion

In closing, state securities regulators want to continue working with the Committee in its efforts to strengthen the financial services regulatory framework and provide the best possible protections for American investors.

Sincerely,

A handwritten signature in cursive script that reads "Denise Voigt Crawford". The signature is written in black ink and is positioned above the printed name and title.

Denise Voigt Crawford
Texas Securities Commissioner and
NASAA President

² In a speech delivered on May 7, 2009, SEC Commissioner Luis Aguilar echoed this concern. The full text of Commissioner Aguilar’s speech is available at <http://www.sec.gov/news/speech/2009/spch050709laa.htm>.